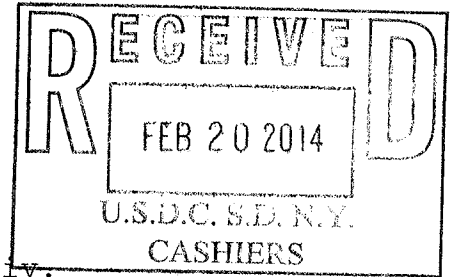


JUDGE ABRAMS

14 CV 1075

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
NORTH JERSEY MEDIA GROUP INC., :

Plaintiff, :

-against- :

14 Civ.

SHUTTERSTOCK, INC. AND SS SPV, :

ECF Case

LLC D/B/A BIGSTOCK D/B/A :

BIGSTOCKPHOTO, :

Defendants. :

-----x

COMPLAINT AND JURY DEMAND

Plaintiff North Jersey Media Group Inc. ("NJMG"), by its undersigned attorneys, for its complaint against defendants Shutterstock, Inc. ("Shutterstock") and SS SPV, LLC d/b/a Bigstock d/b/a BigStockPhoto ("Bigstock"), alleges:

Nature of the Action

1. NJMG is bringing this action to enforce its copyright in its iconic photograph of three firefighters raising the American flag at the ruins of the World Trade Center site on September 11, 2001 (the "Flag Raising Photograph").

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

4. Defendants are subject to the personal jurisdiction of this Court pursuant to N.Y. C.P.L.R. § 301 based upon their place of business being in this state.

Parties

5. NJMG is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in Woodland Park, New Jersey. NJMG is engaged in the business of news reporting. Its two daily publications, The Record and Herald News, have a daily circulation of approximately 151,000 and a Sunday circulation of approximately 175,000. In addition, NJMG publishes more than forty weekly community newspapers with a combined circulation of approximately 630,000. Its twelve magazines have a circulation of approximately 350,000. Its website, www.northjersey.com, has more than 11.5 million page views per month, and its other website, www.bergen.com, has approximately 750,000 page views per month.

6. Upon information and belief, Shutterstock is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in New York, New York.

7. Upon information and belief, Bigstock is a limited liability company organized under the laws of the State of Delaware with its principal place of business in New York, New York. Upon information and belief, Shutterstock owns Bigstock.

NJMG's Copyright

8. On September 11, 2001, an employee of NJMG, acting within the scope of his employment, took the Flag Raising Photograph. A copy is annexed as Exhibit A. The Flag Raising Photograph has become an iconic image that has received international attention. Because an employee of NJMG took the Flag Raising Photograph while acting within the scope of his employment, it is a "work made for hire" as defined by Section 101 of the Copyright Act. NJMG is therefore the sole owner of the copyright in the Flag Raising Photograph.

9. In 2002, NJMG entered into a license agreement with the United States Postal Service ("USPS") which granted the USPS a non-exclusive right to create and sell stamps or other philatelic products bearing the image of NJMG's Flag Raising Photograph.

Defendants' Infringing Acts

10. Defendants have, without permission, sold copies of the USPS stamp, which bear the image of NJMG's Flag Raising Photograph.

11. Defendant Shutterstock sold copies of the USPS stamp bearing NJMG's Flag Raising Photograph through its website, www.shutterstock.com. Upon information and belief, Shutterstock obtained its first copy from a user named "catwalker."

12. Defendant Bigstock sold copies of the USPS stamp bearing NJMG's Flag Raising Photograph through its website, www.bigstockphoto.com. Upon information and belief, Bigstock obtained its first copy from a user named "carolinasmith."

13. Upon information and belief, Shutterstock and Bigstock are not jointly and severally liable for any damages resulting from the acts alleged in this complaint.

CLAIM FOR RELIEF

(Copyright Infringement - 17 U.S.C. § 501)

14. NJMG repeats the allegations in paragraphs 1 through 13 as if set forth in full.

15. NJMG owns, registered and received the United States Certificate of Copyright Registration No. VA 1-014-297 for the copyright in the Flag Raising Photograph (the "Flag Raising Copyright"). A copy of the United States Certificate of Copyright Registration is annexed as Exhibit B.

16. NJMG's Flag Raising Copyright is valid and enforceable.

17. Defendants have infringed NJMG's Flag Raising Copyright by making and distributing unauthorized copies of it, or a derivative work of it, in violation of 17 U.S.C. § 501.

18. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage NJMG. NJMG has no adequate remedy at law for these wrongs and injuries. NJMG is, therefore, entitled to a preliminary and/or permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing NJMG's Flag Raising Copyright.

19. Defendants have willfully infringed NJMG's Flag Raising Copyright.

20. NJMG is entitled to recover damages sustained as a result of defendants' unlawful conduct, including defendants' profits, or alternatively, at NJMG's election, statutory damages.

WHEREFORE, NJMG demands judgment:

A. Preliminarily and/or permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing NJMG's Flag Raising Copyright in violation of 17 U.S.C. § 501;

B. Awarding NJMG Shutterstock's profits, or alternatively, at NJMG's election, statutory damages, as a

result of Shutterstock's infringement of NJMG's Flag Raising Copyright;

C. Awarding NJMG Bigstock's profits, or alternatively, at NJMG's election, statutory damages, as a result of Bigstock's infringement of NJMG's Flag Raising Copyright;

D. Awarding NJMG its costs in this action, including its reasonable attorneys' fees pursuant to 17 U.S.C. § 505; and

E. Granting such other and further relief as to this Court seems just and proper.

Jury Trial Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, NJMG hereby demands a trial by jury of all issues that are so triable.

Dated: New York, New York
February 20, 2014

DUNNEGAN & SCILEPPI LLC

By William Dunnegan
William Dunnegan (WD0015)
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Richard Weiss (RW4039)
rw@dunnegan.com
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North Jersey Media Group Inc.
350 Fifth Avenue
New York, New York 10118
(212) 332-8300

Exhibit A



Exhibit B

Additional Certificate (17 U.S.C. 706)
Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-014-297



EFFECTIVE DATE OF REGISTRATION

10 05 2001
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

Three Firefighters Raising The American Flag on the Ruins of the World Trade Center

Photograph

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volumes ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

a North Jersey Media Group Inc.

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile Name of Country

OR Citizen of New Jersey Domiciled in New Jersey

DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was This Author's Contribution to the Work Anonymous? ☐ Yes ☒ No Pseudonymous? ☐ Yes ☒ No If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☒ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile Name of Country

OR Citizen of New Jersey Domiciled in New Jersey

DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was This Author's Contribution to the Work Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No If the answer to either of these questions is "Yes," see detailed instructions.

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☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3

a Year in Which Creation of This Work Was Completed 2001

This information must be given Year in all cases.

Date and Notice of First Publication of This Particular Work

Complete this information Month 9 Day 12 Year 2001

ONLY if the work has been published. U.S.A.

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

North Jersey Media Group Inc.
150 River Street
Hackensack, NJ 07601-7172

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ►

• Complete all applicable spaces (numbers 5-8) on the reverse side of this page.
• See detailed instructions. • Sign the form at the 8.

DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY

FORM VA

CHECKED BY

CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number

Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material. Identify any preexisting work or works that this work is based on or incorporates.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name

Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP

Sally A. Steffen, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Area code and daytime telephone number (215) 864-8222

Fax number (215) 864-8999

Email steffen@ballardspahr.com

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of North Jersey Media Group, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s)

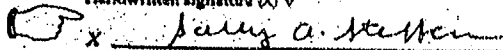
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Sally A. Steffen

Date 9/28/01

Handwritten signature (X) V

Certificate
will be
mailed in
window
envelope
to this
address:

Name

Sally A. Steffen, Esquire

Number/Street/Apt Ballard Spahr Andrews & Ingersoll, LLP

1735 Market Street, 51st Floor

City/State/ZIP

Philadelphia, PA 19103

• Complete all necessary spaces
• Sign your application in space 8

1. Application form

2. Non-refundable filing fee in check or money

3. Original to Register of Copyrights

4. Deposit material

Library of Congress

Copyright Office

101 Independence Avenue S.E.

Washington, D.C. 20540-6000

*17 U.S.C. § 508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 109, or in any written statement filed in connection with the application, shall be fined not more than \$2,500, or imprisoned not more than 5 years, or both, at the discretion of the court.

June 1999—100,000
WEB REV: June 1999

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